

REMARKS

Applicants would like to express appreciation to the Examiner for the detailed Official Action provided and for the allowance of claims 1-5 and 29. Upon entry of the present amendment, the drawings will have been amended, claim 31 will have been added, and claims 1-12 and 29-31 will be pending in the present application.

The Examiner has rejected claim 11 under 35 U.S.C. § 112, second paragraph, noting that this limitation is contrary to the specification. Applicants note that the Examiner's understanding as to the first wall 23 and second wall 22 is correct. However, as discussed *supra*, Applicant calls the Examiner's attention to page 8, lines 19-21 of the present application, which describes Fig. 4, which shows alternative embodiments wherein the wall surface of the annular protruded wall 22 is "constricted forwardly," *i.e.*, extending radially inwardly from the periphery of the first wall surface, as claimed in claim 11. By the present amendment, Applicants have corrected Fig. 4 to properly show this inwardly protruding second wall, as originally shown Fig. 4 of Applicants' informal drawings filed concurrently with the present application, and also as shown in Fig. 4 of Applicants' priority document (Japanese Application No. 11-355305), the priority application having been expressly incorporated by reference at the time of filing the present application (*see* MPEP 2163.07, which describes amending the application to include features supported in the original description). Therefore, no new matter has been entered. It is thus respectfully requested that the Examiner withdraw the rejection under 35 U.S.C. § 112, second paragraph.

The Examiner has rejected claims 6-12 and 30 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,916,192 to NITA, finding that this reference teaches all limitations of these

claims.

Applicants respectfully traverse the Examiner's rejection. Applicants submit that NITA, as well as the other references of record, are markedly different from the present claimed invention. Specifically, NITA does not disclose an endoscope having at least the claimed first and second wall surfaces of independent claim 6. Rather, in NITA, the "first wall surface," identified by the Examiner as the distal end of 32 (and located between passage bore 37 and outlet passageways 42 in Fig. 3), and the "second wall surface," identified by the Examiner as the distal end of 16 (and located between the outlet passageways 42 and outlet apertures 44), are actually a *unitary curved surface* (shown in Figs. 4A-4C of NITA), rather than two separate wall surfaces as claimed, since the outlet passageway is just a hole and cannot divide wall surfaces. Further, Applicants have provided new claim 31 to further define the two separate wall surfaces by reciting that the first wall surface is discontinuous with the second wall surface.

Applicants further submit that the applied NITA reference (as with the previously-applied FISCHER reference, which Applicants addressed in responses filed on July 10 and December 24, 2002, and which arguments therein are expressly incorporated herein) does not disclose the spray nozzle as claimed in independent claim 6. To the contrary, NITA merely discloses "infusion outlet apertures" 44, which do not spray fluid (*see* col. 7, lines 18-22 of NITA) but rather infuse fluid. As discussed with the Examiner during the telephonic interview of December 9, 2002, "spray" has a unique dictionary definition. For example, *Webster's New Collegiate Dictionary* defines "spray" as, *inter alia*, "a jet of vapor or finely divided liquid." NITA does not teach the spraying of fluid based on this definition, but rather merely discloses a hole for fluid to pass therethrough. It is thus

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respectfully submitted that for this additional reason, claim 6 and the claims dependent therefrom are patentably distinct from the applied NITA reference.

It is therefore respectfully submitted that NITA, as well as the other references of record, fails to teach or disclose the invention of independent claim 6, as well as the claims dependent therefrom.

With respect to the Examiner's rejection of dependent claims 7-12 and 30, since these claims (as well as newly added claim 31) are dependent from allowable independent claim 6, which is allowable for at least the reasons discussed *supra*, these dependent claims are also allowable for at least these reasons. Further, all dependent claims recite additional features which further define the present invention over the references of record. It is thus respectfully submitted that all rejected claims are patentably distinct from the references of record.

Absent a disclosure in a single reference of each and every element recited in a claim, a *prima facie* case of anticipation cannot be made under 35 U.S.C. § 102. Since the applied reference fails to disclose each and every element recited in independent claim 6, and the claims dependent therefrom, these claims are not anticipated thereby. Accordingly, the Examiner is respectfully requested to withdraw the rejection under 35 U.S.C. § 102(b).

Thus, Applicants respectfully submit that each and every pending claim of the present application meets the requirements for patentability under 35 U.S.C. § 102, and respectfully requests the Examiner to indicate the allowance of each and every pending claim in the present application.

COMMENTS ON STATEMENT OF REASONS FOR THE INDICATION OF ALLOWABLE  
SUBJECT MATTER

In response to the Statement of Reasons for the Indication of Allowable Subject Matter, mailed by the U.S. Patent and Trademark Office on September 24, 2003, along with the above-noted Official Action, Applicants wish to clarify the record with respect to the basis for patentability of the allowed claims in the present application. In this regard, while Applicants do not disagree with the Examiner's indications that certain identified features are not disclosed by the prior art references, as noted by the Examiner, Applicants further wish to clarify that each of the independent claims in the present application recites a particular combination of features, and the basis for patentability of each of these claims is further based on the particular totality of the features recited therein. The dependent claims set forth additional basis for their patentability in accordance with their recited limitations as well as in accordance with the particular limitations of the respective base claims.

SUMMARY AND CONCLUSION

In view of the foregoing, it is submitted that the present amendment is in proper form and that none of the references either taken together or taken alone in any proper combination thereof, anticipate or render obvious Applicants' invention. In addition, the applied references of record have been discussed and distinguished, while significant features of the present invention have been pointed out. Accordingly, consideration of the present amendment, reconsideration of the outstanding Official Action and allowance of the present application and all of the claims therein are respectfully requested and are now believed to be appropriate.

Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,  
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